



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-181-2024
Date of decision: 9th May, 2024

Sagar Angras
...Petitioner(s)
Versus
State of Haryana
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vikram Chaudhari, Senior Advocate with
Mr. Digvijay Singh, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Namit Khurana, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

The instant revision petition has been preferred by the petitioner-accused seeking quashing of order dated 04.01.2024 passed by learned Additional Sessions Judge, Yamunanagar in Sessions Case bearing CIS No. SC/19/2023 titled as ‘State Vs. Sagar Angras’ arising out of FIR No. 770 dated 24.10.2020 registered under Sections 376(2)(n), 452 and 506 of Indian Penal Code, 1860 at Police Station Jagadhari, District Yamuna Nagar, whereby, the charges under sections 354, 376, 452 and 506 of IPC were ordered to be framed as against him.

2. To encapsulate briefly, the aforementioned FIR was lodged on 24.10.2020, on the basis of a written complaint filed by the complainant 'M'



(name withheld) alleging therein that from the past four years, the petitioner had been sexually exploiting her on the pretext of performing marriage with her but had refused to marry her later and was going to perform marriage with some other girl on 25.10.2020. She also alleged that on 20.10.2020 also, the petitioner had come to her house at about 2:00 PM, when she was present alone and after inducing her on the pretext of performing marriage, he forcibly had sexual relations with her and thereafter bluntly refused to marry her and also extended threats to kill her, if she reported about the incident to any person. After registration of FIR, investigation proceedings were initiated against the petitioner. He was extended benefit of pre-arrest bail by a Co-ordinate Bench of this Court vide order dated 4.12.2020 passed in CRM-M-38469-2020. On completion of usual formalities and investigation, challan was presented against him. He moved an application (Annexure P-17) before the learned trial Court making prayer for his discharge but by order dated 04.01.2024, the said application was dismissed and order was passed for framing charges under the aforementioned sections against him which is impugned before this Court.

3. The instant petition has been filed by the petitioner on the grounds and it has been vehemently argued by learned counsel for the petitioner that the impugned order as passed by the learned trial Court thereby giving direction to frame charge under Section 376(2)(n) of IPC is not sustainable in the eyes of law in view of the fact that there is enough material on record to show that the relationship between the parties was

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purely consensual in nature. He has argued that infact, the complainant was in relationship with one Amay Goel and since the latter had cheated the complainant and had eloped with her sister and even performed marriage with her, therefore, she was in the state of depression and at that point of time, she had come into contact with the petitioner who was her classmate during the school time. The petitioner had given a helping hand to the complainant and gradually a romantic relationship and then physical intimacy had been developed between them. He has argued that there in nothing on record to suggest that the petitioner had ever given any promise to perform marriage with the complainant or had coerced or influenced her for any intimate relationship. Rather the Whatsapp chat record, copies of which have been produced by him as Annexures P-2 to P-5, were sufficient to show that it was the complainant who was manipulative in this regard and kept on emotionally and mentally pressurizing him to maintain such relationship with him to that extent that she used to extend threats to commit suicide.

4. Learned counsel further argued that since with the passage of time, the petitioner realized that the behaviour of the complainant was hostile, impulsive, possessive and irrational as she expected him to talk to her throughout the day and even during odd hours in the night and also intimidated him on trivial matters and also abused his family members, therefore, he had taken a call to end the relationship. It is argued that this fact can be gathered from the whatsapp conversation, which had taken place

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between the parties during the period from December, 2019 to February, 2020, copies of which has been produced on record as Annexure P-2 to P-5. Further argument as raised by learned counsel for the petitioner is that despite the fact that he had broken up with the complainant in the month of March, 2020 and had made it clear to her that he could not marry her, still the complainant kept on emotionally pressurizing him to maintain relationship between them and he had then maintained cordial friendly relations with her as he too did not want to sever ties with her as a friend. He has argued that the petitioner got engaged on 05.08.2020 and this fact was also very well known to the prosecutrix.

5. Learned counsel for the petitioner has further argued that the allegations with regard to his forcibly establishing physical relations with the complainant on 20.10.2020 were false on the face of the record as details of the whatsapp conversation which took place between them on that date showed that it was on the asking of the prosecutrix that he had even lunch with her at a restaurant at that day and had even gone to a temple. Learned counsel for the petitioner has also drawn the attention of this Court to the sworn deposition recorded by the complainant before the trial Court, wherein she is shown to have stated that on 20.10.2020, the petitioner had got physically intimate with her at her boutique, whereas, the allegations in the FIR are qua her being ravished in her house. It is further argued that the allegations against the petitioner were *prima facie* false and fabricated but while passing order to frame charge under Section 376(2)(n) and other

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Sections, the learned trial Court did not take the same into consideration. It is strenuously argued by him that even if, the allegations as levelled in the FIR are taken on the face of record, they do not make out a case of any forcible sexual relationship between the parties, since the complainant was an adult female who had maintained continuous sexual relations with the petitioner since long and nothing has come on record to show that her consent was obtained through any deceit or by misguiding her. With these broad submissions, it is urged that the petition deserves to be allowed.

6. *Per contra*, learned State counsel has submitted that there was no illegality or infirmity in the impugned order as there was a *prima facie* case on record to prove that the petitioner had been having forcibly sexual relations with the complainant from the last four years and as on 20.10.2020, he had criminally trespassed into her house, had committed rape upon her and had also extended threats to her. Therefore, it is argued that the impugned order does not warrant any interference and the revision petition is liable to be dismissed.

7. Learned counsel for the complainant has argued that the petitioner had been indulging into sexual relationship with her from the past four years before lodging of the FIR on the pretext of performing marriage with her and without informing her, had got engaged with some other girl, despite the fact that their roka ceremony had already been performed. At this stage the learned trial Court could not assess the probative value of the material sought to be produced by the petitioner on record and the Court had



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to consider the broad probabilities of the case and not to conduct a mini trial and therefore, it is argued that the impugned order deserves to be upheld.

8. I have heard learned counsel for the parties at considerable length and have carefully perused the material placed on record.

9. Before delving into the correctness of the order dated 04.01.2024 whereby the learned trial Court had passed order for framing charges under Section 376(2)(n), 452 and 506 of IPC (charges were actually framed on 09.01.2024), this Court considers it necessary to reiterate the well settled proposition of law pertaining to the framing of charges and the scope of this Court to interfere under Sections 397 and 401 of IPC.

10. In this context, reference can firstly be made to a celebrated pronouncement of Hon'ble Supreme Court cited as '**Union of India Vs. Prafulla Kumar Samel, (1979) 3 SCC 4**' wherein the the following principles had been laid down while dealing with the question of discharge under Section 227 of Cr.P.C. or framing of charge under Section 228 of Cr.P.C., the relevant para is reproduced as under:-

10. "Thus, on a consideration of the authorities mentioned above, the following principles emerge:

1. That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has



not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3. *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

4. *That in exercising his jurisdiction under Section 227 of the Code the Judge, which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

(Emphasis supplied)

11. Reliance can also be placed upon ‘**Sajjan Kumar Vs. CBI, (2010) 9 SCC 368,**’ wherein the Hon’ble Supreme Court had considered the powers of Courts in respect of framing of charge and discharge and the fact that a *prima facie* case would depend upon the facts and circumstances of each case and had laid down the following principles:-

“21. *On consideration of the authorities about the scope*



of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie cases would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be



satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal”.

(Emphasis supplied)

12. It has been held time and again by the Hon’ble Supreme Court that at the stage of framing of charges, the Court possesses the power to sift and weigh the evidence for the limited purpose of ascertaining whether or not a *prima facie* case has been made out against the accused. The trial Court must exercise its judicial mind to the facts of the case before arriving at a conclusion that there is sufficient ground for proceeding against the accused. It has been observed that such exercise must be undertaken so as to ensure that an individual does not have to be put through the rigors of the criminal judicial system for no fault of his. The sufficiency of grounds would take



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within its fold the nature of the evidence recorded by the police or documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame charge against him. Reference in this regard can also be had to the observations made by Apex Court in '*P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398*' and '*Vishnu Kumar Shukla and another Vs. State of Uttarpradesh and another, AIR 2024, Supreme Court 90*'.

13. Recently, in a case cited as '*Shashikant Sharma and others Vs. State of Uttar Pradesh and another 2024(1) RCR (Criminal) 67*', the Hon'ble Supreme Court observed that if from the admitted evidence of the prosecution, as reflected in the documents filed by the investigating officer in the report under Section 173 Cr.P.C., the necessary ingredients of an offence are not made out, then the Court is not obliged to frame charge for such offence against the accused.

14. The ratio of law as laid down in the above cited authorities is that while framing of charge, the very foundation of formation of opinion is that as to whether there is sufficient material on record to '*prima facie*' make out a case of commission of an offence. The word *prima facie* when used in terms of *prima facie* view as far as consideration on the point of framing charge is concerned, would certainly means there being enough material for substance which would give rise to strong suspicion against the accused and holding of a view in favour of the prosecution.

15. In view of the discussion as made above, qua the proposition of



law with regard to framing of charge, now the question that requires consideration is as to whether, the learned trial Court had rightly proceeded to frame charge under Section 376(2)(n) of IPC as against the petitioner. As per this Section, a person committing rape repeatedly upon the same person is liable for punishment. The definition of rape is given under Section 375 of IPC. It enumerates six descriptions of the offence. Relevant for our purpose is the first and second description as per which, a man is said to commit rape if he does any of the act as mentioned in this Section, against the will or without the consent of a female. The expression 'against her will' means that the act must have been done inspite of the opposition of the woman. It is settled proposition of law that an inference as to consent can be drawn, if only based on evidence or probabilities of the case. It denotes an active will of a mind of person of permitting the doing of the act complained of. 'Consent', for the purpose of Section 375 requires voluntary participation not only after the exercise of discretion based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between the resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of circumstance relied upon.

16. In '*Sonu @ Subhash Kumar vs. State of Uttar Pradesh and another, 2012 (2) RCR (Criminal) 269*', the Hon'ble Supreme Court had observed that 'consent' of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the consent was vitiated by a 'misconception of fact' arising out of a



promise to marry, two propositions must be established. The promise of marriage must have been, a false promise given in bad faith and with no intention of being adhered to, at the time it was given. The false promise itself must be of immediate relevance or bear a direct nexus to the woman's decision to engage in the sexual act. In '***Parmod Surya Bhan Pawar Vs. State of Maharashtra and another (2019) 9 SCC 608***', the Supreme Court had observed that where the promise to marry is false and the intention of the maker at the time of making promise itself was not to abide by it, to deceive the woman to convince her to engage in sexual relations, there is 'misconception of fact' that vitiates the 'woman's consent'. On the other hand, a breach of promise cannot be held said to be a false promise. To establish a false promise, the maker of the promise should have no intention of upholding his word at the time of giving it. The consent of a woman under Section 375 is vitiated on the ground of a 'misconception of fact' where such misconception was the basis for her choosing to engage in the said act. Similar observations were made in '***Deepak Gulati Vs. State of Haryana, AIR 2013 (3) RCR (Criminal) 96***' and '***Uday Vs. State of Karnataka, (2003) 4 SCC 46***'.

17. On applying the ratio of law as laid down in the above cited authorities to the peculiar facts and circumstances of the case, it is to be considered by this Court as to whether the sexual relations between the parties were consensual or were based on any promise on the part of the petitioner to marry the complainant with the intention of not keeping the



same since the very inception, because if it is found that there was any promise of marriage which was genuine but the marriage between the parties could not take place due to some external circumstance, then such promise cannot be said to be false and consent cannot be considered to be vitiated. On adverting to the factual matrix of the present case, it clearly transpires that the petitioner and the complainant were in long term relationship. Though no such plea has been taken by the petitioner in his petition, nor it was stated so by the complainant in the FIR but in her statement recorded under Section 164 of Cr.P.C, on 24.10.2020 as well as in her sworn statement, copy of which has been placed on record, the complainant stated that the family members of the petitioner had performed their roka ceremony on 13.09.2019. It has been alleged in the FIR that the petitioner had been forcibly maintaining physical relationship with her from the last four year by giving promise to marry her but was now performing marriage with someone else though in the FIR, it was not alleged so. Further, in statement recorded under Section 164 of Cr.P.C., she stated that sometime thereafter, the petitioner and his family members had started avoiding the question of performance of marriage between them. She herself is shown to have admitted being in relationship with the petitioner from the last 4-5 years. Her statement under Section 164 of Cr.P.C. does not show that physical relationship was maintained between them, by the petitioner with her prior to the alleged roka ceremony, rather if this statement is to be considered, then physical relationship was maintained between them thereafter. The



petitioner has produced on record before this Court copies of screenshots and transcription of the chats having taken place between the complainant and himself during the period of their relationship as Annexure P-2 to P-5. Some of these chats show the complainant while using very abusive language against the mother and other family members of the petitioner even much before lodging of FIR of this case. In some of these whatsapp chats, she is shown to have been making seducing conversation with him. Though this court is not required to take these chats into consideration at this stage, however, certain crucial facts that can still be taken note of on the basis of the allegations levelled in the FIR, statement recorded under Section 164 of Cr.P.C. as well as documents placed on record by the petitioner during the course of investigation are that there was apparently no false promise on the part of the petitioner to perform marriage with the complainant nor she was under any misconception of fact. Admittedly, the sexual relationship between the duo was not under any fear, threat or coercion, rather the same clearly appears to be a conscious consent. The complainant being a major female having sufficient maturity and intelligence to understand the significance and outcome of the act was indulging in and maintained physical relationship with the petitioner despite the fact that as per her own saying, roka ceremony was performed by the family of the petitioner but they had started avoiding question of performance of marriage between them. The consent of the complainant for having sexual relationship with the petitioner could not be even stated to be implied, misguided or coerced one.



It is also not a case where the complainant had been pressurized to give up her rights to refuse having physical relationship with the petitioner due to extending any threat, rather she is shown to have made self contradictory statement with regard to incident allegedly having taken place on 20.10.2020. As in the FIR, it is alleged that the petitioner came to her house on 20.10.2020 at around 2:00 PM and forcibly had physical relations with her, whereas her sworn deposition shows that she stated that on 20.10.2020, the petitioner had come to her boutique and he got intimate with her in her boutique. The complainant was obviously not having any disability or lack of intelligence or fear of any injury, rather she was independent enough to notice that the petitioner and his family members were avoiding the question of performance of marriage between them and if still, she chose to maintain physical relationship with him till October, 2020, then the same cannot be said to be anything else but a conscious and voluntary decision. At the most, the present one can be stated to be breach of promise on the part of petitioner to marry the complainant but not a case of false promise to marry. A false promise since the very outset or the consent of the complainant having been secured on the basis of any misconception of fact, is certainly, liable to be vitiated but there is nothing on record of this case to suggest that the petitioner had made the complainant to enter into sexual relationship with her by making promise to marry her or had made such promise with no intention of keeping such promise. Rather he has produced material on record to show that it was due to the erratic behaviour of the complainant



that he had tried to severe relationship with her. Her irrational behaviour is reflected from the inappropriate whatsapp chats made by her thereby abusing the mother and other family members of the petitioner. The complainant was maintaining continuous physical relationship with the petitioner for a period of four years and was capable of consciously evaluating the outcome of her consent and as well as the acts, she was indulging in thereby making her a conscious consenting partner to the sexual relationship. No doubt, the Court at the time of framing of charge is not supposed to conduct a mini trial but at the same time, it cannot act as a post man for the prosecution as well, rather it is expected from the court has to exercise its judicial discretion to note that a strong suspicion against the accused arises or not?

18. In view of the discussion as made above, I am inclined to hold that it could not even *prima facie* be stated that the sexual relationship between the petitioner and the complainant was due to any false promise of marriage or misconception of fact or fear or injury thereby making out a case for commission of offence of rape within the meaning of Section 375 of IPC and punishable under Section 376(2)(n) of IPC and rather it is explicit that the relations of the parties were a result of conscious decision on the part of the complainant also thereby taking the allegations out of ambit of Section 375 punishable under Section 376 of Indian Penal Code as even on taking the allegations levelled in the FIR, the statement recorded under Section 164 of Cr.P.C. and in the charge sheet as filed against the petitioner this court



feels that the ingredients essentially required for proving commission of offence punishable under Section 376(2)(n) are not made out. So far as the charges under Sections 506 and 452 of IPC are concerned, since they have also been framed on the basis of the same allegations, therefore, the order qua framing the same can also not be stated to sustainable. In view of what has been discussed above, the impugned order is set aside. Accordingly, the petition is allowed.

19. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

9th May, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |